

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 11

HOUSE BILL 2019

AN ACT

AMENDING SECTION 13-604, ARIZONA REVISED STATUTES; RELATING TO HISTORICAL
PRIOR FELONY CONVICTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-604, Arizona Revised Statutes, is amended to read:

13-604. Dangerous and repetitive offenders; definitions

A. Except as provided in subsection F, G or H of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 4, 5 or 6 felony, whether a completed or preparatory offense, and who has a historical prior felony conviction shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	3 years	4.5 years	6 years
Class 5	1.5 years	2.25 years	3 years
Class 6	1 year	1.75 years	2.25 years

B. Except as provided in subsection I, J or K of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 2 or 3 felony, whether a completed or preparatory offense, and who has a historical prior felony conviction shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	6 years	9.25 years	18.5 years
Class 3	4.5 years	6.5 years	13 years

C. Except as provided in subsection F, G, H or S of this section or section 13-604.01, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a class 4, 5 or 6 felony, whether a completed or preparatory offense, and who has two or more historical prior felony convictions shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for
 2 release pursuant to section 41-1604.07 or the sentence is commuted. The
 3 presumptive term may be mitigated or aggravated within the range prescribed
 4 under this subsection pursuant to the terms of section 13-702, subsections
 5 B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6 Class 4	8 years	10 years	12 years
8 Class 5	4 years	5 years	6 years
9 Class 6	3 years	3.75 years	4.5 years

10 D. Except as provided in subsection I, J, K or S of this section or
 11 section 13-604.01, a person who is at least eighteen years of age or who has
 12 been tried as an adult and who stands convicted of a class 2 or 3 felony, and
 13 who has two or more historical prior felony convictions, shall be sentenced
 14 to imprisonment as prescribed in this subsection and shall not be eligible
 15 for suspension of sentence, probation, pardon or release from confinement on
 16 any basis except as specifically authorized by section 31-233, subsection A
 17 or B until the sentence imposed by the court has been served, the person is
 18 eligible for release pursuant to section 41-1604.07 or the sentence is
 19 commuted. The presumptive term may be mitigated or aggravated within the
 20 range prescribed under this subsection pursuant to the terms of section
 21 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 Class 2	14 years	15.75 years	28 years
24 Class 3	10 years	11.25 years	20 years

25 E. A person who is at least eighteen years of age or who has been
 26 tried as an adult and who stands convicted of any misdemeanor or petty
 27 offense, other than a traffic offense, and who has been convicted of one or
 28 more of the same misdemeanors or petty offenses within two years next
 29 preceding the date of the present offense shall be sentenced for the next
 30 higher class of offense than that for which such person currently stands
 31 convicted.

32 F. Except as provided in section 13-604.01, a person who is at least
 33 eighteen years of age or who has been tried as an adult and who stands
 34 convicted of a class 4, 5 or 6 felony involving the intentional or knowing
 35 infliction of serious physical injury or the discharge, use or threatening
 36 exhibition of a deadly weapon or dangerous instrument without having
 37 previously been convicted of any felony shall be sentenced to imprisonment
 38 as prescribed in this subsection and shall not be eligible for suspension of
 39 sentence, probation, pardon or release from confinement on any basis except
 40 as specifically authorized by section 31-233, subsection A or B until the
 41 sentence imposed by the court has been served, the person is eligible for
 42 release pursuant to section 41-1604.07 or the sentence is commuted. The
 43 presumptive term may be mitigated or aggravated within the range prescribed
 44 under this subsection pursuant to the terms of section 13-702, subsections
 45 B, C and D. The terms are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
1				
2	Class 4	4 years	6 years	8 years
3	Class 5	2 years	3 years	4 years
4	Class 6	1.5 years	2.25 years	3 years

5 G. Except as provided in section 13-604.01, upon conviction of a class
6 4, 5 or 6 felony involving the intentional or knowing infliction of serious
7 physical injury or the discharge, use or threatening exhibition of a deadly
8 weapon or dangerous instrument a person who has a historical prior felony
9 conviction involving the intentional or knowing infliction of serious
10 physical injury or the use or exhibition of a deadly weapon or dangerous
11 instrument shall be sentenced to imprisonment as prescribed in this
12 subsection and shall not be eligible for suspension of sentence, probation,
13 pardon or release from confinement on any basis except as specifically
14 authorized by section 31-233, subsection A or B until the sentence imposed
15 by the court has been served, the person is eligible for release pursuant to
16 section 41-1604.07 or the sentence is commuted. The presumptive term may be
17 mitigated or aggravated within the range prescribed under this subsection
18 pursuant to the terms of section 13-702, subsections B, C and D. The terms
19 are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
20				
21	Class 4	8 years	10 years	12 years
22	Class 5	4 years	5 years	6 years
23	Class 6	3 years	3.75 years	4.5 years

24 H. Except as provided in subsection S of this section or section
25 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the
26 intentional or knowing infliction of serious physical injury or the
27 discharge, use or threatening exhibition of a deadly weapon or dangerous
28 instrument a person who has two or more historical prior felony convictions
29 involving the intentional or knowing infliction of serious physical injury
30 or the use or exhibition of a deadly weapon or dangerous instrument shall be
31 sentenced to imprisonment as prescribed in this subsection and shall not be
32 eligible for suspension of sentence, probation, pardon or release from
33 confinement on any basis except as specifically authorized by section 31-233,
34 subsection A or B until the sentence imposed by the court has been served,
35 the person is eligible for release pursuant to section 41-1604.07 or the
36 sentence is commuted. The presumptive term may be mitigated or aggravated
37 within the range prescribed under this subsection pursuant to the terms of
38 section 13-702, subsections B, C and D. The terms are as follows:

	<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
39				
40	Class 4	12 years	14 years	16 years
41	Class 5	6 years	7 years	8 years
42	Class 6	4.5 years	5.25 years	6 years

43 I. Except as provided in section 13-604.01, upon a first conviction
44 of a class 2 or 3 felony involving discharge, use or threatening exhibition
45 of a deadly weapon or dangerous instrument or upon conviction of a class 2

or 3 felony when the intentional or knowing infliction of serious physical injury upon another has occurred, the defendant shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years

J. Except as provided in section 13-604.01, upon conviction of a class 2 or 3 felony involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, a person who has a historical prior felony conviction that is a class 1, 2 or 3 felony involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

K. Except as provided in subsection S of this section or section 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another, a person who has two or more historical prior felony convictions that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed

under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	21 years	28 years	35 years
Class 3	15 years	20 years	25 years

L. For the purposes of subsections I, J and K of this section in determining the applicability of the penalties provided in this section for second or subsequent class 2 or 3 felonies, the conviction for any felony committed prior to October 1, 1978 which, if committed after October 1, 1978, could be a dangerous felony under this section may be designated by the state as a prior felony.

M. Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for purposes of this section.

N. A person who has been convicted in any court outside the jurisdiction of this state of an offense which if committed within this state would be punishable as a felony or misdemeanor is subject to the provisions of this section. A person who has been convicted as an adult of an offense punishable as a felony or a misdemeanor under the provisions of any prior code in this state shall be subject to the provisions of this section.

O. Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced under subsection E of this section shall not be included in the two years required to be free of convictions for purposes of that subsection.

P. The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if the previous conviction or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody as provided in subsection R of this section is charged in the indictment or information and admitted or found by the court or if the dangerous nature of the felony is charged in the indictment or information and admitted or found by the trier of fact. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed prior to release. The court shall allow the allegation of a prior conviction, the dangerous nature of the felony or the allegation that the defendant committed a felony while released on bond or on the defendant's own recognizance or while escaped from preconviction custody at any time prior to the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the defendant was in fact prejudiced by the untimely filing and states the reasons for these findings, provided that when the allegation of a prior conviction is filed, the state must make available to the defendant a copy of any material or information obtained concerning the prior conviction. The charge of previous conviction or the allegation that the defendant committed a felony while

1 released on bond or on the defendant's own recognizance or while escaped from
2 preconviction custody shall not be read to the jury. For the purposes of
3 this subsection, "dangerous nature of the felony" means a felony involving
4 the discharge, use or threatening exhibition of a deadly weapon or dangerous
5 instrument or the intentional or knowing infliction of serious physical
6 injury upon another.

7 Q. Intentional failure by the court to impose the mandatory sentences
8 or probation conditions provided in this title shall be deemed to be
9 malfeasance.

10 R. A person who is convicted of committing any felony offense, which
11 felony offense is committed while the person is released on bail or on the
12 defendant's own recognizance on a separate felony offense or while the person
13 is escaped from preconviction custody for a separate felony offense, shall
14 be sentenced to a term of imprisonment two years longer than would otherwise
15 be imposed for the felony offense committed while released on bond or on the
16 defendant's own recognizance or while escaped from preconviction
17 custody. The additional sentence imposed under this subsection is in
18 addition to any enhanced punishment that may be applicable under any of the
19 other subsections of this section. The defendant is not eligible for
20 suspension of sentence, probation, pardon or release from confinement on any
21 basis except as specifically authorized by section 31-233, subsection A or
22 B until the two years are served, the person is eligible for release pursuant
23 to section 41-1604.07 or the sentence is commuted.

24 S. A person who is at least eighteen years of age or who has been
25 tried as an adult and who stands convicted of a serious offense except a drug
26 offense, first degree murder or any dangerous crime against children, whether
27 a completed or preparatory offense, and who has previously been convicted of
28 two or more serious offenses not committed on the same occasion shall be
29 sentenced to life imprisonment and is not eligible for suspension of
30 sentence, probation, pardon or release from confinement on any basis except
31 as specifically authorized by section 31-233, subsection A or B until the
32 person has served not less than twenty-five years or the sentence is
33 commuted.

34 T. A person who is convicted of committing any felony offense with the
35 intent to promote, further or assist any criminal conduct by a criminal
36 street gang shall not be eligible for suspension of sentence, probation,
37 pardon or release from confinement on any basis except as authorized by
38 section 31-233, subsection A or B until the sentence imposed by the court has
39 been served, the person is eligible for release pursuant to section
40 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum
41 sentence for the offense shall be increased by three years. The additional
42 sentence imposed pursuant to this subsection is in addition to any enhanced
43 sentence that may be applicable.

44 U. A person who is convicted of intentionally or knowingly committing
45 aggravated assault on a peace officer while the officer is engaged in the

1 execution of any official duties pursuant to section 13-1204, subsection A,
2 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the
3 presumptive sentence authorized under this chapter and is not eligible for
4 suspension of sentence, commutation or release on any basis until the
5 sentence imposed is served.

6 V. As used in this section:

7 1. "ABSCONDER" MEANS A PROBATIONER WHO HAS MOVED FROM THE
8 PROBATIONER'S PRIMARY PLACE OF RESIDENCE WITHOUT PERMISSION OF THE PROBATION
9 OFFICER AND CANNOT BE LOCATED WITHIN NINETY DAYS OF THE PREVIOUS CONTACT, AND
10 A PETITION TO REVOKE HAS BEEN FILED IN THE SUPERIOR COURT ALLEGING THAT THE
11 PROBATIONER'S WHEREABOUTS ARE UNKNOWN. A PROBATIONER IS NO LONGER DEEMED TO
12 BE AN ABSCONDER WHEN VOLUNTARILY OR INVOLUNTARILY RETURNED TO PROBATION
13 SERVICE.

14 ~~1.~~ 2. "Historical prior felony conviction" means:

15 (a) Any prior felony conviction for which the offense of conviction:

16 (i) Mandated a term of imprisonment except for a violation of chapter
17 34 of this title involving a drug below the threshold amount; or

18 (ii) Involved the intentional or knowing infliction of serious
19 physical injury; or

20 (iii) Involved the use or exhibition of a deadly weapon or dangerous
21 instrument; or

22 (iv) Involved the illegal control of a criminal enterprise; or

23 (v) Involved aggravated driving under the influence of intoxicating
24 liquor or drugs, driving while under the influence of intoxicating liquor or
25 drugs with a suspended, canceled, revoked or refused driver license or
26 driving under the influence of intoxicating liquor or drugs with two or more
27 driving under the influence of intoxicating liquor or drug convictions within
28 a period of sixty months; or

29 (vi) Involved any dangerous crime against children as defined in
30 section 13-604.01.

31 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
32 (a) of this paragraph, that was committed within the ten years immediately
33 preceding the date of the present offense. Any time spent ON ABSCONDER
34 STATUS WHILE ON PROBATION OR incarcerated is excluded in calculating if the
35 offense was committed within the preceding ten years. IF A COURT DETERMINES
36 A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION THAT TIME IS NOT
37 EXCLUDED.

38 (c) Any class 4, 5 or 6 felony, except the offenses listed in
39 subdivision (a) of this paragraph, that was committed within the five years
40 immediately preceding the date of the present offense. Any time spent ON
41 ABSCONDER STATUS WHILE ON PROBATION OR incarcerated is excluded in
42 calculating if the offense was committed within the preceding five years. IF
43 A COURT DETERMINES A PERSON WAS NOT ON ABSCONDER STATUS WHILE ON PROBATION
44 THAT TIME IS NOT EXCLUDED.

1 (d) Any felony conviction that is a third or more prior felony
2 conviction.

3 ~~2.~~ 3. "Preconviction custody" means the confinement of a person in
4 a jail in this state or another state after the person is arrested for or
5 charged with a felony offense.

6 ~~3.~~ 4. "Serious offense" means any of the following offenses if
7 committed in this state or any offense committed outside this state which if
8 committed in this state would constitute one of the following offenses:

9 (a) First degree murder.

10 (b) Second degree murder.

11 (c) Manslaughter.

12 (d) Aggravated assault resulting in serious physical injury or
13 involving the discharge, use or threatening exhibition of a deadly weapon or
14 dangerous instrument.

15 (e) Sexual assault.

16 (f) Any dangerous crime against children.

17 (g) Arson of an occupied structure.

18 (h) Armed robbery.

19 (i) Burglary in the first degree.

20 (j) Kidnapping.

21 (k) Sexual conduct with a minor under fifteen years of age.

22 ~~4.~~ 5. "Substantive offense" means the felony, misdemeanor or petty
23 offense that the trier of fact found beyond a reasonable doubt the defendant
24 committed. Substantive offense does not include allegations that, if proven,
25 would enhance the sentence of imprisonment or fine to which the defendant
26 otherwise would be subject.

APPROVED BY THE GOVERNOR MARCH 28, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 28, 2003.

Passed the House February 3, 2003,

Passed the Senate March 20, 2003,

by the following vote: 57 Ayes,

by the following vote: 26 Ayes,

0 Nays, 1 Not Voting
2 Vacancies
Jake Flake
Speaker of the House
Norman L. Tyoore
Chief Clerk of the House

0 Nays, 4 Not Voting
Ken Bennett
President of the Senate
Charmine Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
24 day of March, 2003,

at 3:12 o'clock P M.
Sandra Ramirez
Secretary to the Governor

Approved this 28 day of
March, 2003,

at 8⁰⁰ o'clock A M.
J. R. ...
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 28 day of March, 2003,

at 3:02 o'clock P M.
Janice K. ...
Secretary of State